

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
) CRIMINAL NO. 04-CR-10167-RCL
)
v.) **VIOLATIONS:**
)
(1) ADAM ELLARD) 21 U.S.C. § 846 -
(2) TROY BREWER) Conspiracy to Possess with Intent
(3) TIMOTHY HERLIHY) to Distribute, and to Distribute,
 Defendants.) Hydrocodone
)
) 21 U.S.C. § 841(a)(1) -
) Possession With Intent To
) Distribute and Distribution of
) Hydrocodone
)
) 18 U.S.C. § 2 -
) Aiding and Abetting
)
)
) 21 U.S.C. § 853 -
) Criminal Forfeiture Allegation

SUPERSEDING INDICTMENT

COUNT ONE: **(21 U.S.C. § 846 - Conspiracy to Possess with
Intent to Distribute and to Distribute
Hydrocodone)**

The Grand Jury charges that:

On or about March 3, 2004, at Revere and elsewhere in the
District of Massachusetts,

1. **ADAM ELLARD**
2. **TROY BREWER, and**
3. **TIMOTHY HERLIHY**

defendants herein, did knowingly and intentionally combine,
conspire, confederate, and agree with each other, and with other
persons unknown to the Grand Jury, to distribute, and to possess

with intent to distribute, hydrocodone, a Schedule III controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

All in violation of Title 21, United States Code, Section 846.

COUNT TWO: (21 U.S.C. §841(a)(1) - Possession with Intent to Distribute and Distribution of Hydrocodone; 18 U.S.C. § 2 - Aiding and Abetting)

The Grand Jury further charges that:

On or about March 3, 2004, at Revere, in the District of Massachusetts,

1. ADAM ELLARD,
2. TROY BREWER, and
3. TIMOTHY HERLIHY,

defendants herein, did knowingly and intentionally distribute, and possess with intent to distribute, hydrocodone, a Schedule III controlled substance.

All in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

FORFEITURE ALLEGATION: (21 U.S.C. § 853)

The Grand Jury further charges that:

1. As a result of the offenses alleged in Counts 1 and 2 of this Indictment,

1. **ADAM ELLARD,**
2. **TROY BREWER, and**
3. **TIMOTHY HERLIHY,**

defendants herein, shall forfeit to the United States any and all property constituting, or derived from, any proceeds the defendants obtained, directly or indirectly, as a result of such offenses; and/or any property used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, any such violations.

2. If any of the property described in paragraph 1, above, as a result of any act or omission of the defendants -

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or has been commingled with other property which cannot be subdivided without difficulty;

it is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the property described in paragraph 1.

All in violation of Title 21, United States Code, Section 853.

NOTICE OF ADDITIONAL FACTORS

The Grand Jury further finds that:

1. As to the offenses charged in Counts One and Two of this indictment and relevant conduct as described in U.S.S.G. § 1B1.3, the Defendant ADAM ELLARD is accountable for a quantity of hydrocodone that, when converted to marijuana as provided by USSG §2D1.1 (drug equivalency table), is equivalent to at least 250 grams of marijuana but less than 1 kilogram of marijuana.

Accordingly, USSG §2D1(c)(16) applies to this defendant.

2. The defendant ADAM ELLARD, at the time of the offenses charged in this indictment, was a career offender. Accordingly, USSG §4B1.1 applies to this defendant.

3. The Defendant ADAM ELLARD was an organizer, leader, manager, and supervisor of the criminal activity charged in this indictment. Accordingly, USSG §3B1.1(c) applies to this defendant.

4. As to the offenses charged in Counts One and Two of this indictment and relevant conduct as described in U.S.S.G. § 1B1.3, the Defendant TROY BREWER is accountable for a quantity of hydrocodone that, when converted to marijuana as provided by USSG §2D1.1 (drug equivalency table), is equivalent to at least 250 grams of marijuana but less than 1 kilogram of marijuana. Accordingly, USSG §2D1(c)(16) applies to this defendant.

5. The defendant Troy Brewer, at the time of the offenses

charged in this indictment, was a career offender. Accordingly, USSG §4B1.1 applies to this defendant.

6. As to the offenses charged in Counts One and Two of this indictment and relevant conduct as described in U.S.S.G. § 1B1.3, the Defendant TIMOTHY HERLIHY is accountable for a quantity of hydrocodone that, when converted to marijuana as provided by USSG §2D1.1 (drug equivalency table), is equivalent to at least 250 grams of marijuana but less than 1 kilogram of marijuana. Accordingly, USSG §2D1(c)(16) applies to this defendant.

A TRUE BILL

Roger Allen
FOREPERSON OF THE GRAND JURY

David G. Tobin
DAVID G. TOBIN
Assistant U.S. Attorney

DISTRICT OF MASSACHUSETTS; December ___, 2004.

Returned into the District Court by the Grand Jurors and
filed.

Mark L. Rose
DEPUTY CLERK
12/16/04
at 3:55pm

Criminal Case Cover Sheet**U.S. District Court - District of Massachusetts**

Place of Offense:	Category No. <u>II</u>	Investigating Agency <u>DEA</u>
Related Case Information:		
County <u>Suffolk</u>	Superseding Ind./ Inf. <input checked="" type="checkbox"/>	Case No. <u>04CR10167RCL</u>
	Same Defendant <input checked="" type="checkbox"/>	New Defendant _____
	Magistrate Judge Case Number <u>04-822-MBB</u>	Search Warrant Case Number _____
	R 20/R 40 from District of _____	
Defendant Information:		
Defendant Name <u>Timothy Herlihy</u>	Juvenile: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Alias Name _____		
Address <u>19 Tibbette Street, Danvers, MA</u>		
Birthdate: <u>1973</u> SS # <u>9652</u>	Sex: <u>Male</u>	Race: <u>Caucasian</u>
Nationality <u>USA</u>		
Defense Counsel if known:	<u>Matthew A. Kamholtz, Esq.</u>	Address <u>125 Summer Street</u>
Bar Number _____	<u>Boston, MA</u>	
U.S. Attorney Information:		
AUSA <u>Michael J. Pelgro; David G. Tobin</u>	Bar Number if applicable _____	
Interpreter: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	List language and/or dialect: _____	
Matter to be SEALED: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<input type="checkbox"/> Warrant Requested	<input checked="" type="checkbox"/> Regular Process	In Custody
Location Status:		
Arrest Date <u>April 15, 2004</u>		
<input type="checkbox"/> Already in Federal Custody as of _____	in _____	
<input type="checkbox"/> Already in State Custody at _____	<input type="checkbox"/> Serving Sentence	<input type="checkbox"/> Awaiting Trial
X On Pretrial Release: Ordered by: <u>Chief USMJ Bowler</u>	on <u>April 20, 2004</u>	
Charging Document: Complaint	<input type="checkbox"/> Information	<input checked="" type="checkbox"/> Indictment
Total # of Counts: <input type="checkbox"/> Petty _____	<input type="checkbox"/> Misdemeanor _____	<input checked="" type="checkbox"/> Felony <u>2 counts</u>
Continue on Page 2 for Entry of U.S.C. Citations		
X I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.		
Date: <u>May 27, 2004</u>	Signature of AUSA: <u>Daniel G. Tobin</u>	
<u>Dec 16, 2004</u>		

District Court Case Number (To be filled in by deputy clerk): _____

Name of Defendant Timothy Herlihy

U.S.C. Citations

	<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count Numbers</u>
Set 1	<u>21/846</u>	<u>Conspiracy To Distribute Hydrocodone</u>	<u>One</u>
Set 2	<u>21/841(a)(1)</u>	<u>Distribution of Hydrocodone/Aiding & Abetting</u>	<u>Two</u>
Set 3	_____	_____	_____
Set 4	_____	_____	_____
Set 5	_____	_____	_____
Set 6	_____	_____	_____
Set 7	_____	_____	_____
Set 8	_____	_____	_____
Set 9	_____	_____	_____
Set 10	_____	_____	_____
Set 11	_____	_____	_____
Set 12	_____	_____	_____
Set 13	_____	_____	_____
Set 14	_____	_____	_____
Set 15	_____	_____	_____

ADDITIONAL INFORMATION: _____

Criminal Case Cover Sheet**U.S. District Court - District of Massachusetts**

Place of Offense:	Category No. <u>II</u>	Investigating Agency <u>DEA</u>
<u>Boston</u>	Related Case Information:	
County <u>Suffolk</u>	Superseding Ind./ Inf. <input checked="" type="checkbox"/>	Case No. <u>04CR10167RCL</u>
	Same Defendant <input checked="" type="checkbox"/>	New Defendant _____
	Magistrate Judge Case Number <u>04-822-MBB</u>	
	Search Warrant Case Number _____	
	R 20/R 40 from District of _____	
Defendant Information:		
Defendant Name <u>Adam Ellard</u>	Juvenile:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Alias Name _____		
Address <u>Shepton Street, Dorchester, MA</u>		
Birthdate: <u>1972</u> SS # <u>9734</u> Sex: <u>Male</u> Race: <u>Caucasian</u> Nationality <u>USA</u>		
Defense Counsel if known: <u>James J. Coviello, Esquire</u>	Address <u>281 Beach Street</u>	
Bar Number _____	<u>Revere, MA</u>	
U.S. Attorney Information:		
AUSA <u>Michael J. Pelgro; David G. Tobin</u>	Bar Number if applicable	_____
Interpreter: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	List language and/or dialect: _____	
Matter to be SEALED: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<input type="checkbox"/> Warrant Requested	<input type="checkbox"/> Regular Process	<input checked="" type="checkbox"/> In Custody
Location Status:		
Arrest Date <u>April 12, 2004</u>		
X Already in Federal Custody as of <u>April 13, 2004</u>	in <u>USMS</u>	
<input type="checkbox"/> Already in State Custody at _____	<input type="checkbox"/> Serving Sentence	<input type="checkbox"/> Awaiting Trial
<input type="checkbox"/> On Pretrial Release: Ordered by: _____	on _____	
Charging Document: Complaint	<input type="checkbox"/> Information	<input checked="" type="checkbox"/> Indictment
Total # of Counts: <input type="checkbox"/> Petty _____	<input type="checkbox"/> Misdemeanor _____	<input checked="" type="checkbox"/> Felony <u>2 counts</u>
Continue on Page 2 for Entry of U.S.C. Citations		
<p>X I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.</p> <p>Date: <u>May 27, 2004</u> Signature of AUSA: <u>Michael J. Tobin</u> <u>Dec. 16, 2004</u></p>		

District Court Case Number (To be filled in by deputy clerk): _____

Name of Defendant Adam Ellard

U.S.C. Citations

	<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count Numbers</u>
Set 1	<u>21/846</u>	<u>Conspiracy To Distribute Hydrocodone</u>	<u>One</u>
Set 2	<u>21/841(a)(1)</u>	<u>Distribution of Hydrocodone</u>	<u>Two</u>
Set 3	_____	_____	_____
Set 4	_____	_____	_____
Set 5	_____	_____	_____
Set 6	_____	_____	_____
Set 7	_____	_____	_____
Set 8	_____	_____	_____
Set 9	_____	_____	_____
Set 10	_____	_____	_____
Set 11	_____	_____	_____
Set 12	_____	_____	_____
Set 13	_____	_____	_____
Set 14	_____	_____	_____
Set 15	_____	_____	_____

ADDITIONAL INFORMATION: _____

Criminal Case Cover SheetU.S. District Court - District of Massachusetts

Place of Offense:	Category No.	II	Investigating Agency	DEA
y Boston	Related Case Information:			
County Suffolk	Superseding Ind./ Inf.	<i>Troy Brewer</i>	Case No.	04CR10167RCL
	Same Defendant		New Defendant	
	Magistrate Judge Case Number	04-822-MBB		
	Search Warrant Case Number			
	R 20/R 40 from District of			

Defendant Information:

Defendant Name	Troy Brewer	Juvenile:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Alias Name			
Address	22 Malden Street, Everett, MA		
Birthdate:	1967	SS #	1928
Sex:	Male	Race:	Black
Nationality	USA		
Defense Counsel if known:	Unknown	Address	
Bar Number			

U.S. Attorney Information:

AUSA	Michael J. Pelgro; David G. Tobin	Bar Number if applicable	
Interpreter:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	List language and/or dialect:	

Matter to be SEALED: Yes No

X Warrant Requested	<input type="checkbox"/> Regular Process	In Custody
---------------------	--	------------

Location Status:

Arrest Date _____

- Already in Federal Custody as of _____ in _____
 Already in State Custody at _____ Serving Sentence Awaiting Trial
 On Pretrial Release: Ordered by: _____ on _____

Charging Document: Complaint Information Indictment**Total # of Counts:** Petty _____ Misdemeanor _____ Felony 2 counts _____

Continue on Page 2 for Entry of U.S.C. Citations

I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.

Date: Dec. 16, 2004
Dec. 16, 2004

Signature of AUSA: David G. Tobin

District Court Case Number (To be filled in by deputy clerk): _____

Name of Defendant Troy Brewer

U.S.C. Citations

	<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count Numbers</u>
Set 1	<u>21/846</u>	<u>Conspiracy To Distribute Hydrocodone</u>	<u>One</u>
Set 2	<u>21/841(a)(1) and 18/2</u>	<u>Distribution of Hydrocodone/Aiding & Abetting</u>	<u>Two</u>
Set 3	_____	_____	_____
Set 4	_____	_____	_____
Set 5	_____	_____	_____
Set 6	_____	_____	_____
Set 7	_____	_____	_____
Set 8	_____	_____	_____
Set 9	_____	_____	_____
Set 10	_____	_____	_____
Set 11	_____	_____	_____
Set 12	_____	_____	_____
Set 13	_____	_____	_____
Set 14	_____	_____	_____
Set 15	_____	_____	_____

ADDITIONAL INFORMATION: _____